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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,338	03/01/2004	Charles Frank	022153.0005US1	2413
34284	7590	12/10/2007		
Rutan & Tucker, LLP. Hani Z. Sayed 611 ANTON BLVD SUITE 1400 COSTA MESA, CA 92626			EXAMINER CHO, HONG SOL	
			ART UNIT 2619	PAPER NUMBER
			MAIL DATE 12/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/791,338

**Applicant(s)**

FRANK ET AL.

**Examiner**

Hong Cho

**Art Unit**

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. Drawings 1-37 are objected to because drawings are not provided with descriptive text labels. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
4. The abstract is objected to because it lacks a concise statement of the technical disclosure of the invention.

***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 19 and 21-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/473713 (hereinafter, "the '713 application"). This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because;

Re claim 19, the scope of the claims of the present application is simply broadened by eliminating claim limitations, i.e., each of any split-ID packets also includes an identifier that is split such that a portion of the identifier is obtained from the encapsulated packet while another portion is obtained from a header portion of the encapsulating packet. It would have been obvious to one of ordinary skill in the art to eliminate those limitations because any data format would be used for making up a given packet. In addition, it is well settled that broadening the scope of claims would have been obvious to one of ordinary skill in the art in view of the narrower issued claim. In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982) and In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir.1993).

Re claims 21-24, they are claims corresponding to claims 2-5 of the 713 application and are therefore rejected with the reason of the rejection based on a nonstatutory double patenting ground.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claim 19 is rejected under 35 U.S.C. 102(e) as being anticipated by Kim et al (Internet Multicast Provisioning Issues for Hierarchical Architecture), hereinafter referred to as Kim.

Re claim 19, Kim discloses communicating across a network via split-ID packets (Kim, section 2.3) comprising both an encapsulating packet and an encapsulated packet (Kim, section 2.3 paragraphs 1-2).

9. Claim 19 is rejected under 35 U.S.C. 102(e) as being anticipated by Kobayashi (US 20010026550).

Re claim 19, Kobayashi discloses transferring data to a target device (figure 2, element 11) across a network via encapsulated packet (figure 5) wherein each of at least some of the packets comprise a split-ID (represented by fields of IP header in figure 5).

*Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of McCanne et al (US 7120666), hereinafter referred to as McCanne.

Re claim 20, Kobayashi discloses all of the limitations of the base claim, but fails to disclose responding to requests for data by sending only a single block of data per request. McCanne discloses a client sending a request for data block to a server and the server responds with data responsive to the request (column 9, lines 42-44). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Kobayashi with the teaching of McCanne for the benefit of providing reliable and partitioned flow of data streams.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of Bennett (US 6618743).

Re claim 21, Kobayashi discloses all of the limitations of the base claim, but fails to disclose the target device comprising a plurality of storage area and the device

associates a network address with each of the plurality of storage areas. Bennett discloses a device associating a network address with each of the plurality of storage areas (figure 1, elements 30, 32-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Kobayashi with the teaching of Bennett so that the device would associate an IP address with each of the plurality of storage areas for the benefit of providing secure division of a disc storage facility for multiple users.

Re claim 22, Kobayashi discloses the split-ID comprising a network address to be used to route the encapsulating packet to the target device (paragraphs [0067] - [0069]), but fails to disclose the split-ID comprising a network address associated with one of the storage areas of the target device. Bennett discloses a device associating a network address with each of the plurality of storage areas (figure 1, elements 30, 32-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Kobayashi with the teaching of Bennett so that the device would associate an IP address with each of the plurality of storage areas for the benefit of providing secure division of a disc storage facility for multiple users.

Re claim 23, Kobayashi discloses the network address being an IP address located in a control portion of an encapsulating IP packet (represented by address fields of IP header in figure 5).

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of Bennett (US 6618743) and further in view of Wang (US 6693912).



Re claim 24, Kobayashi and Bennett disclose all of the limitations of the base claim, but fail to disclose a packet comprising command and a token where the token of a packet is used by the target device to determine whether to execute the command of the packet. Wang discloses an active gateway receiving an active packet, performing QoS mapping as specified in an active packet (column 3, lines 14-20), and performing QoS management operations by running a program specified in an active packet (column 3, lines 28-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the packet format of Kobayashi so that a program or a program identifier and request would be inserted in the optional fields of the IP packet header for the benefit of carrying upper layer protocol data units in the payload.

### *Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*hc*  
Hong Cho  
Patent Examiner  
12/06/2007